



Employment Security Department

WASHINGTON STATE

Workforce Innovation and Opportunity Act Policy Employment System Administration and Policy

Washington envisions a nationally recognized fully integrated One-Stop system with enhanced customer access to program services, improved long-term employment outcomes for job seekers and consistent, high quality services to business customers. In order to achieve this vision, Employment System Administration and Policy sets a common direction and standards for Washington's WorkSource system through the development of WorkSource system policies, information memoranda, and technical assistance.

Policy Number: 5406, Revision 3

To: Washington WorkSource System

Effective Date: March 6, 2023

Subject: WIOA Title I-B Administrative Sanctions

1. Purpose:

To establish and implement a state administrative sanctions policy for all entities that receive Workforce Innovation and Opportunity Act (WIOA) Title I-B funds directly from the Employment Security Department (ESD) in its capacity as the Governor's designated State Workforce Agency (SWA) and state grantee charged with state administrative oversight over those funds.

The purpose of the administrative sanctions policy is to ensure accountability of entities that receive WIOA Title I-B funds directly from ESD in meeting the needs of the local workforce development system and ensure compliance with applicable federal and state laws, regulations, policies, guidance, and terms and conditions of applicable awards and contracts.

To accomplish these responsibilities, as well as to satisfy its oversight role, ESD will impose penalties or conditions in the form of sanctions for any issues of noncompliance that have not been promptly resolved based on state-imposed corrective actions identified in monitoring or through other oversight reports or activities.

Note: The state scope does not relieve Local Workforce Development Boards (LWDBs) of their responsibilities regarding the procurement, administration, management, and oversight of their sub-recipients.

2. Background:

Section 184 of Public Law 113-128 (WIOA) requires each state to establish policies to ensure accountability with regard to the proper disbursement and use of WIOA Title I-B funds.

The WorkSource System is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance services for limited English proficient individuals are available free of charge.

ESD, as the state administrative entity for WIOA Title I-B programs, is responsible for oversight and monitoring. The agency's oversight and monitoring focus is on subrecipients, including but not limited to, LWDBs and Local Chief Elected Officials (LCEOs), to ensure acceptable standards for fiscal accountability, program administration, procurement, and service delivery are established and in practice. Oversight and monitoring will be conducted as described in WIOA Title I Policy 5414 to ensure compliance with applicable uniform administrative requirements; to identify system strengths, weaknesses, required corrective actions, and trends requiring State action.

In addition to routine annual monitoring, ESD may investigate any matter(s) deemed necessary to determine compliance with all applicable laws, regulations, uniform administrative requirements, and State and locally established policies. This monitoring may be performed at any time.

Entities that receive WIOA Title I-B funds directly from ESD and that are found to be noncompliant with WIOA Title I-B laws, regulations, and guidance and Uniform Administrative Guidance as well as applicable state and agency policies are subject to state sanctions when it is documented that attempts to provide assistance to effect voluntary correction of violations have failed, or it is documented that entities failed or refused to correct violations.

3. Policy:

a. Sanctionable Acts:

ESD may assign conditions, remedial actions and/or penalties to a subrecipient for failure to comply as required with state and federal regulations. The severity of these restrictions is proportional to the frequency, nature and severity of the sanctionable act(s). This applies to only WIOA Title I-B funded programs. Sanctionable acts include, but are not limited to, the following:

- i. Failure to submit timely and accurate required financial reports.
- ii. Failure to take corrective actions to resolve findings, items to address, unresolved questioned costs, and disallowed costs identified during monitoring, investigative, or program reviews, including failure to comply with technical assistance plans developed by the State.
- iii. Failure to rectify or resolve all independent audit findings or questioned costs within required timeframes identified in Management Letters per WIOA Title I Policy 5414.
- iv. Failure to submit required annual audits.
- v. Breach of administrative and service contract requirements.
- vi. Failure to retain required service delivery and financial records.
- vii. Gross negligence or substantial violation.
- viii. Incidents of fraud, abuse, malfeasance, misapplication of funds, or lack of sustained fiscal integrity.
- ix. Failure to carry out the functions of a local board as described in its approved local WIOA plan and according to WIOA.

b. Types of Sanctions

The following non-exhaustive examples may be imposed, but do not supplant applicable civil and criminal actions under other pertinent federal, state, or local laws, regulations, policies, or terms and conditions of applicable awards and contracts.

- i. Require repayment of disallowed costs.
- ii. Withhold reimbursements from ESD for any and all WIOA Title I-B funds requested.
- iii. Terminate the Intergovernmental Agreement between ESD and the local grant subrecipient or fiscal agent.
- iv. Recapture and reallocate WIOA Title I-B funds in the event of de-designation of a Workforce Development Area by the Governor per 20 CFR 683.140.
- v. Determine the LWDB or local grant subrecipient or fiscal agent ineligible for discretionary funds or receipt of voluntary reallocations.
- vi. Require submission of additional or more detailed financial or performance reports.
- vii. Require full implementation of corrective action plans, including targeted technical assistance from ESD or a contractor approved by ESD at its discretion.
- viii. Require participation in technical and quality assurance activities.
- ix. Revoke approval of all or part of the local plan impacted.
- x. Impose a reorganization plan, which may include:
 - A. Decertifying the LWDB;
 - B. Prohibiting the use of eligible providers;
 - C. Selecting an alternative entity to administer the program in the WDA. The alternative entity may be any entity that demonstrates capability of complying with federal and state laws, regulations, policies and guidance.
 - D. Designating a new fiscal agent.
- xi. Initiation of suspension or debarment proceedings.
- xii. Imposing other remedies that are legally available.

c. Substantial Violations

A determination of a substantial violation occurs after a sanctionable act. Findings may occur during or after the program, grant, fiscal, contract, or calendar year. Routine findings identified and requiring action as a result of the regular monitoring process are not considered to be substantial violations. Compliance findings, items to be addressed, unresolved questioned costs, and disallowed costs identified and requiring action as a result of the regular monitoring process are not considered to be substantial violations unless they meet certain criteria, listed below, and/or until the regular monitoring process to resolve them has been exhausted and they are still not resolved.

The following are examples of sanctionable acts that may lead to a determination of a substantial violation by ESD:

- i. Failure by the LWDB to submit a compliant local plan or timely local plan modification as required by the State Workforce Development Board (SWDB) on behalf of the Governor, as required by WIOA.
- ii. Failure by the local subrecipient and/or grant recipient to comply with the Uniform Administrative Guidance, found at 2 CFR part 200.

- iii. Failure of the LWDB to carry out functions required in Section 107(d) of WIOA at least once during every four-year WIOA local plan period as evidenced by appropriate documentation (e.g., local board meeting minutes, reports to local or state board, etc.).
- iv. Failure by LCEOs, or their official designees, to resolve incidents of noncompliance of applicable federal, state, or local laws resulting in compliance findings, items to address, unresolved questioned costs, and/or disallowed costs regardless of whether LCEOs or their subrecipients and/or fiscal agents, LWDBs, or LWDB contractors caused the incidents of noncompliance or took actions that were non-compliant. See 683.710(b)(1)(2) and (4)
- v. Incidents of fraud, misfeasance, nonfeasance, malfeasance, misapplication of funds, or other similar violations using WIOA Title I-B funds, which includes formula grants, National Dislocated Worker Grant funds, and WIOA Title I-B statewide activities funds.

If there is a substantial violation of a specific provision of WIOA or the Uniform Guidance and corrective action is not taken, ESD, after briefing the Governor, as the Governor's designated SWA and state grantee for WIOA Title I-B funds, will:

- Issue a notice of intent to revoke approval of all or part of the local plan affected; or
- Impose a reorganization plan, which may include:
 - Decertifying the local board involved;
 - Prohibiting the use of eligible training providers;
 - Selecting an alternate entity to administer the program for the local area involved;
 - Merging the local area into one or more other local areas; or
 - Making such other changes as the Governor or the Secretary of Labor determines to be necessary to secure compliance.

In the event of disallowed costs, the Local Chief Elected Official or consortium of Local Chief Elected Officials will be required to repay the amount of disallowed costs with non-federal funds.

d. Sanction Process

The State's sanctions process is as follows:

- i. Intent to Sanction

After reviewing the corrective actions imposed by the state through monitoring and fiscal reviews and the extent to which they were or were not implemented by the entity and after being satisfied that all attempts at voluntary resolution were exhausted, the ESD Commissioner or designee(s) determines whether a sanctionable act has occurred and a sanction should be pursued. ESD will determine the remedial action(s) required and/or penalty assessed and issue notification when such violation is resolved or action/penalty is completed.

ESD will issue a written Intent to Sanction to the entity regarding any identified sanctionable act(s) and potential sanction to be imposed. The entity will be provided 30 calendar days to correct the identified sanctionable act. If the identified sanctionable act

is resolved within the designated timeframe or if the required corrective action is accepted, no further action will be taken and a final sanction determination will not be issued per Section 3.e of this policy. Intent to Sanctions may not be appealed.

An Intent to Sanction will be sent to the Local Chief Elected Official or consortium of Local Chief Elected Officials, Local Workforce Development Board chair, and Fiscal Agent and will include the following information:

- The finding(s) for the sanctionable act(s);
- The potential sanction and/or penalty to be imposed; and
- The timeline for completing the remedial action and result if not met or fully resolved.

For entities that choose to address findings after receipt of an Intent to Sanction, the determination will remain in place until the State is satisfied that the findings have been sufficiently addressed per the negotiated corrective actions.

Entities may request a one-time extension of the deadline if a good-faith effort to resolve the sanction(s) has been made and additional time is needed to fully remedy the identified sanctionable act(s). The state may grant the request. If granted, the length of the extension will be based on the reasonableness of the request, not to exceed 5 working days.

Entities who do not correct the identified sanction(s) within the established timeframe will result in the state issuing a final sanction determination.

ii. Final Sanction Determination

ESD will issue a written final notice to the entity regarding the identified sanctionable act(s) and sanction to be imposed. Such notice will be sent as early as reasonably possible to provide an opportunity to appeal the sanction (i.e., in most instances notice will be provided thirty (30) calendar days in advance of the effective date of the sanction).

State-imposed sanctions may be appealed to the U.S. Secretary of Labor within 30 calendar days. A copy of the appeal must be simultaneously provided to the ESD Commissioner on behalf of the Governor. If the appeal is upheld, ESD will withdraw the sanction.

Note: The elements addressed within the intent to sanction and final sanction determination are subject to change as deemed appropriate by ESD (e.g., an instance wherein an entity's appeal warrants an amendment to the timeline for completing remedial action).

iii. Resolving or Closing Sanctions

ESD will issue a written notice to entities documenting the resolution and closing of the remedial actions and/or penalties. Such notices will include the sanction resolution date (i.e., official date a specific sanction is determined to be resolved and closed).

iv. **Appealing State-Imposed Sanctions to the U.S. Secretary of Labor**

State-imposed sanctions may be appealed to the U.S. Secretary of Labor. Appeals must be sent to the Secretary by certified mail with return receipt requested no later than 30 calendar days after the date the sanctions were imposed.

Send appeals to:

Secretary
U.S. Department of Labor
200 Constitution Avenue NW, Washington, DC 20210
Attention: ASET (Assistant Secretary Employment & Training Administration)

A copy of the appeal must be simultaneously provided to the ESD Commissioner.

The Secretary will review and issue final decisions on appeals no later than 45 days after receipt of appeals.

If the Secretary rejects the appeal, the sanction will be imposed. If the Secretary upholds the appeal, ESD will withdraw the sanction and take no further action.

4. Definitions:

Finding(s) include: (a) any item or combination of items that results in Disallowed Costs above \$25,000; (b) any item, combination of items or process that poses significant risk to the organization's control systems and ability to meet the requirements of federal and state grants and contracts; and (c) any Item(s) to Address identified in a previous year's Management Letter that continue to be a compliance issue. Findings are included in the Management Letter, Draft Monitoring Report, and Final Monitoring Report.

Noncompliance is any instance or occurrence of failure to comply with applicable federal, state and local laws, regulations, contract provisions, grant agreements, or policies.

Sanction is a penalty imposed/assessed or a remedial action required for noncompliance with applicable federal, state and local laws, regulations, contract provisions/grant agreements or conditions, or policies.

Sanctionable act is a violation of federal, state and local laws, regulations, contract provisions, grant agreements, or policies, as determined by the Department or USDOL; primarily involving an occurrence of noncompliance. Such failures may occur during or after the program, grant, fiscal, contract, or calendar year.

Substantial violation is a severe violation of the provisions of WIOA Title I-B, which may include, but is not limited to, fraud, misfeasance, nonfeasance, malfeasance, misapplication of funds,

gross mismanagement, gross negligence, failure to take corrective action, lack of sustained fiscal integrity, and failure to perform the duties required by WIOA.

5. References:

- [WIOA Public Law 113-128](#)
- [Whistleblower Protection Act of 1989](#)
- [Office of Administrative Hearings](#)
- [20 Code of Federal Regulations \(CFR\) Parts 677](#) et al., WIOA Final Rules and Regulations
- WIOA Final Rule, [20 CFR 683.400-440](#), [20 CFR 683.700-750](#) and [20 CFR 683.650](#)
- [20 CFR Part 678](#), et al.
- [2 CFR 200](#) , et al.
- [WIOA Title I Policy 5414 – WIOA Title I Monitoring](#)
- [WIOA Policy 5410 rev. 1 Dispute Resolution and Appeals](#)
- [WIOA Policy 5205 rev. 2 Cash Depositories](#)
- [WIOA Policy 5200](#) Fiscal Definitions

6. Supersedes:

WIOA Title I Policy 5406, Revision 2, WIOA Title I-B Administrative Sanctions

7. Website:

<https://wpc.wa.gov/policy/state/WIOA>

8. Action:

Local Workforce Development Boards must distribute this policy broadly throughout the system to ensure that WorkSource System staff are familiar with its content and requirements.

9. Attachments:

None

Direct Inquiries To:

*Employment System Administration and Policy
Employment System Policy and Integrity Division
Employment Security Department
SystemPolicy@esd.wa.gov*